



**GOAL 9: Credible Deterrent/Greater Compliance**

*Artwork by Robbie*

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## GOAL 9: A CREDIBLE DETERRENT TO POLLUTION AND GREATER COMPLIANCE WITH THE LAW

EPA will ensure full compliance with laws intended to protect human health and the environment.

### OVERVIEW

The environmental benefits envisioned by Federal regulations and statutes can only be achieved by ensuring the compliance of regulated facilities and entities. By providing assistance designed to prevent violations, incentives to motivate compliance, and enforcement actions to correct violations and deter others, EPA obtains continuous improvement in compliance with standards, permits, and other requirements. As a result, environmental risks are mitigated, regulated facilities do a better job of environmental management, and public demands for environmental information are met.

In partnership with the States and Federally recognized Tribes, EPA's enforcement and compliance assurance program regulates approximately eight million entities that range from community drinking water systems to pesticide users to major industrial facilities. Almost 1.3 million of these are facilities, such as municipal wastewater treatment plants, large manufacturing and industrial operations, or hazardous waste treatment and storage facilities, for which performance is closely tracked and data maintained. The remaining 6.5 million entities range from small facilities to individual property owners. Given the broad scope of regulatory requirements under the various environmental statutes and the large and diverse universe of regulated entities, the enforcement and compliance assurance program uses a variety of tools and strategies to maximize compliance.

Over the past five years, EPA has developed new tools that provide compliance assistance and compliance incentives to complement a strong program of compliance monitoring and civil and criminal enforcement. A strong enforcement effort provides the foundation for the national compliance program, motivates regulated entities to seek assistance and

use incentive policies, and provides fairness in the marketplace by ensuring that noncomplying facilities do not gain an unfair competitive advantage.

As a result of the delegation/authorization provided for by most statutes, State, Tribal, and local governments bear much of the responsibility for ensuring the compliance of regulated facilities and other entities. Nationally, on average, States conduct over 80 percent of all inspections and are responsible for 84 percent of formal enforcement actions. States also are the primary vehicle for delivering on-site compliance assistance to regulated sources.

In its Strategic Plan, EPA established two objectives that contribute to achieving the goal: to identify and reduce noncompliance with environmental laws and to promote compliance through assistance and incentives.

### FY 1999 PERFORMANCE

#### Identifying and Reducing Noncompliance with Environmental Laws

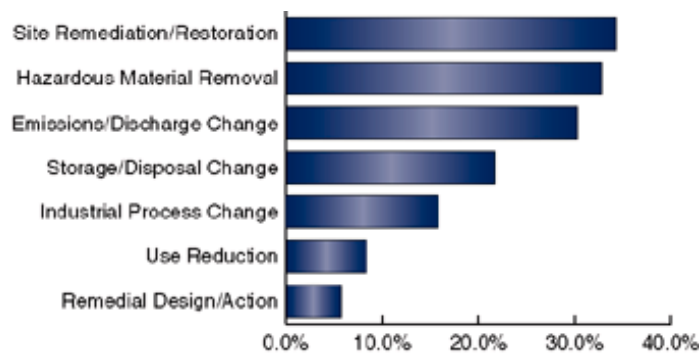
EPA's objective is to identify and reduce significant noncompliance in high-priority areas while maintaining a strong enforcement presence in all regulatory program areas.

*In FY 1999, EPA exceeded its goal to deter non-compliance by maintaining levels of field presence and enforcement actions, particularly in high-risk areas and where populations are disproportionately exposed (APG 58).* The Agency uses compliance inspections and assessments to determine the compliance status of a regulated facility. *In FY 1999 EPA conducted 21,410 inspections.* Where necessary, EPA will address noncompliance with an enforcement action appropriate to the violation. *In FY 1999, EPA undertook 3,935 civil judicial and administrative enforcement actions,* the highest

number taken over the past three years. These activities identify and correct noncompliance and deter future violators. Deterrence is further enhanced through the use of penalties calculated to level the economic playing field by ensuring that violators, including Federal facilities, do not realize economic benefit from noncompliance. The criminal enforcement program deals with violations which are the result of knowing or negligent action.

Bringing enforcement actions can lead to facility compliance, changes in facility operations, and reductions in pollutant loadings. In FY 1999, over 6.8 billion pounds of pollutants were reduced as a result of EPA enforcement actions. Also, about 21 percent of concluded enforcement actions resulted in improvements to the environment. The chart below identifies examples of these improvements. Another 47 percent of concluded enforcement actions resulted directly in changes to facility management practices, which should lead to environmental improvements. In FY 1999, polluters were required to spend more than \$3.6 billion, a 62 percent increase over FY 1998 levels, to correct violations and take additional steps to protect the environment. Clean Air Act settlements were responsible both for the highest amount of injunctive relief (over one billion dollars or 32 percent of the total) and for the greatest value (\$141 million or 60 percent of the total) of supplemental environmental projects (SEPs) through which violators pay for various kinds of additional environmental improvements.

### Examples of Environmental Improvements from FY 1999 Civil Cases



Percentages are based on the compliance requirements of the 741 FY 1999 civil settlements which required improvements in the use or handling of pollutants. Many settlements reported multiple results.

The following are examples of FY 1999 enforcement actions that led to environmental improvements in large part by addressing high-risk violations that are priority areas for the enforcement and compliance assurance program:

- On October 22, 1998, the Department of Justice and EPA announced a settlement with seven major manufacturers of diesel engines that will prevent 75 million tons of harmful nitrogen oxide (NO<sub>x</sub>) emissions from entering the atmosphere by the year 2025. The settlement included an \$83.4 million total penalty, the largest civil penalty ever for violation of environmental law.
- On July 29, 1999, the United States and the State of Georgia reached a settlement with the City of Atlanta to pay a civil penalty of \$700,000 and take corrective action to bring its sewer system into compliance with the Clean Water Act and the Georgia Water Quality Control Act. In an earlier settlement, the City of Atlanta also agreed to implement a \$27.5 million SEP to create a greenway corridor and clean up various streams, as well as pay a \$2.5 million penalty—the largest Clean Water Act penalty ever assessed against a municipality.
- On July 21, 1999, Royal Caribbean Cruises, Ltd., pled guilty to 21 violations of Federal law and was fined \$18 million for violating the Clean Water Act and the Oil Pollution Act by dumping waste oil and hazardous chemicals into the ocean and for making false statements to the Coast Guard. Royal Caribbean agreed to institute a five-year environmental compliance plan.

*In FY 1999, EPA continued to make great strides toward targeting high-priority areas for enforcement and compliance assistance and completing baseline data assessments in major databases needed to measure changes in key indicators of compliance. Specifically, the Agency met its goal of identifying five high-priority areas and improving two data systems (APG 59).*

With respect to identifying compliance priorities, the Agency conducted several targeting analyses to identify the most significant environmental problem areas. For example, the Agency

analyzed industrial sectors using new data integration techniques, including a compliance index based on such factors as inspection coverage, current significant noncompliance rates, and a pollutant index. This analysis led to the identification of seven environmental problem areas to target, thereby meeting the goal. EPA's efforts to provide Regions with targeting tools are also yielding results. For example, EPA Region 3 recently conducted investigations of sources with plant modifications to assess compliance with New Source Review/Prevention of Significant Deterioration (NSR/PSD) requirements.

#### **NEW SOURCE REVIEW/PREVENTION OF SIGNIFICANT DETERIORATION (NSR/PSD) INVESTIGATIONS UNCOVER PERMIT VIOLATIONS**

NSR/PSD is a preconstruction review and permitting program that applies to major and modified major Clean Air Act sources. NSR/PSD assures that major sources apply state-of-the-art equipment to minimize impacts on air quality. In a growing economy, facilities are expanding capacity and making significant plant modifications. In most instances these modifications trigger regulatory requirements, and plants may not be applying for the necessary permit amendments. Routine inspections sometimes do not identify plant modifications, so Region 3 piloted an investigation approach that incorporates up-front facility capacity and permit reviews. Using this approach, the Region developed criteria to identify facilities where plant modifications are likely to have occurred and then selected certain industries in which to undertake a more in-depth review. These investigations, while resource intensive, are yielding impressive results. Region 3 investigated eight pulp mills and found significant violations at seven of these facilities. Requiring the installation of control devices at these plants will result in large reductions in air emissions. Based on Region 3's results, most EPA Regions are now using these investigative tools and strategies.

The Agency continued to develop a complete baseline data assessment for multiple industries through the Sector Facility Indexing Project (SFIP). The SFIP measures key environmental indicators for more than 640 industrial facilities in five industrial sectors and provides public access to a wealth of

environmental information. The result is a collection of facility-level profiles that provide information on compliance and inspection histories, chemical releases and spills, demographic characteristics of surrounding areas, and facility production trends.

With respect to the Agency's goal of improving data systems, the Agency improved its Air Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) and DOCKET. AFS contains emissions, compliance, and permit data for regulated stationary sources. EPA enhanced AFS to identify high-priority violations. DOCKET is the official EPA database for tracking and reporting information on civil judicial and administrative enforcement cases under all environmental statutes. Enhancements to DOCKET resulted in the addition of information on self-audits conducted by facilities and improved quality of information on enforcement action outcomes. Also, EPA made various improvements to 12 other national enforcement and compliance data systems and responded to over 1,000 user support requests relating to enforcement and compliance data systems.

*For FY 1999, EPA exceeded its goal of assisting States and Tribes in enhancing the effectiveness of their enforcement, compliance assurance, and incentive programs by providing specialized assistance and training. Specifically, the Agency provided 218 courses to State and Tribal officials to enhance the effectiveness of their programs (APG 60).* Actual deliveries exceeded the projected target because EPA emphasized capacity-building by providing more training opportunities for State, local, and Tribal professionals than originally projected. These courses help build State and Tribal capacity to conduct inspections and investigate environmental crimes. EPA is now working to expand and improve its training efforts through the National Enforcement Training Institute Online, a virtual university on the Internet that will automate services and provide on-demand training, course registration, and easy access to reference material.

Other efforts to assist State and Tribal partners in FY 1999 included the following:

- Working with States to ensure that State audit laws and policies met minimum Federal enforce-



ment, information gathering, and public access criteria. For example, the Agency's discussions with a number of States resulted in changes to or interpretations of audit laws that were ultimately acceptable to those States and that also met the minimum Federal requirements.

- Awarding \$1.8 million in cooperative agreements to Wisconsin, Colorado, Washington, Oregon, Missouri, Texas, Connecticut, California, Indiana, Maryland, and New Hampshire to develop, implement, and share the results of outcome-based performance measures pilot projects for enforcement and compliance assurance programs.
- Distributing \$1.8 million in grant funds to assist Federally recognized Tribes in implementing compliance assistance, compliance monitoring, and enforcement capacity-building activities. For example, EPA provided funding to Tribes to assemble information on the compliance status of facilities located in Indian country, to assess environmental conditions associated with landfill closure, and to develop waste reduction and recycling programs.

### Promoting Compliance Through Assistance and Incentives

EPA's objective is to promote the regulated community's voluntary compliance with environmental requirements through compliance incentives and assistance programs.

EPA met its goal of *increasing the regulated community's use of compliance incentives and their understanding of, and ability to comply with, regulatory requirements; including operating nine small business compliance assistance centers and completing sector notebooks, guides, and other outreach materials begun in FY 1998 (APG 61).*

EPA developed the Audit/Self-Policing Policy to encourage voluntary auditing and self-disclosure of environmental violations and to provide a uniform enforcement response toward such disclosures. Under the Audit Policy, EPA does not seek severity or "gravity-based" penalties and generally does not recommend prosecution when facilities promptly disclose and expeditiously correct compliance

problems found through voluntary environmental audits or the use of compliance management systems.

### TELECOMMUNICATION INDUSTRY AUDIT POLICY SETTLEMENTS

In February 1999, EPA granted relief under its Audit Policy from certain penalties to 10 telecommunications companies that found and disclosed their own violations. The 10 companies voluntarily disclosed and promptly corrected 1,300 environmental violations that occurred at more than 400 of their facilities nationwide. Later, in the fall of 1999, seven additional telecommunications companies were granted relief from civil penalties for voluntarily disclosing and promptly correcting a total of 742 environmental violations that occurred at more than 200 of their facilities across the nation. Both of these audit disclosures stem from outreach efforts by EPA after the January 1998 settlement with GTE. That settlement resolved more than 600 Emergency Planning and Community Right-to-Know Act and Spill Prevention Control and Countermeasures violations at 314 GTE facilities in 21 States and was the largest Agency settlement reached to date through EPA's self-disclosure policy.

Disclosure activity has increased every year since the effective date of the policy. In FY 1999, EPA more than doubled its goal of obtaining 400 self-disclosures from facilities under the Audit Policy, with approximately 1,000 facilities reporting violations from approximately 260 companies. An additional 700 disclosures also resulted from targeted self-audit initiatives. For example, the Region 5 Mini-Mill Project used the Audit Policy to provide all mini-mills in the six States within the Region a six-month window of opportunity to report any violations found and correct the problems. Ten of the 22 mini-mills carried out self-audits, and Region 5 followed up with inspections at the remaining 12. No penalties were assessed for mills that voluntarily disclosed and corrected violations through a self-audit. Enforcement actions have been taken against several of the mills that chose not to self-audit and that were later inspected and found in violation.

In addition to creating environmental benefits, the voluntary self-policing by facilities enhances government efforts to maximize compliance and allows regulated entities to review their operations holistically. To further expand the benefits of this program, EPA has undertaken a series of sector-based enforcement initiatives. For instance, EPA developed a multimedia initiative with the Industrial Organic Chemical Sector that resulted in 45 self-disclosures. EPA also began discussions with the airline industry in July 1999 to highlight a settlement with American Airlines that involved an audit of its facilities at 152 airports. That settlement resulted in prompt correction of numerous Federal fuel standard violations, payment of a \$95,000 penalty corresponding to the economic benefit resulting from the noncompliance, and changes at Boston's Logan airport that will eliminate an estimated 700 tons of pollutants from the air every year. Also, in FY 1999, 76 small businesses came forward to disclose violations under the Small Business Policy program, a seven-fold increase over FY 1998. EPA is modifying the Small Business Policy to expand the options allowed under the Policy for discovering violations and to establish a longer time period for disclosure.

*In FY 1999, EPA operated nine Compliance Assistance Centers designed to help small businesses and small governmental entities understand and comply with their regulatory obligations (APG 61).* The Centers' Internet sites focus on local government and specific industry sectors and provide applicable regulatory and technical information in a convenient and user-friendly manner. The Centers' Internet sites offer "plain English" summaries of regulations and access to State regulations, vendor directories, and numerous other technical resources. In FY 1999, in total, the Centers' Internet sites were visited over 750 times a day by businesses, compliance assistance providers, other government representatives, and the general public, resulting in a total of 260,000 user sessions. Three of these Centers received awards: 1) *GreenLink®*—the automotive service and repair center—has been selected to receive a Vision 2000 Model for Excellence Award by the Office of Small Business Advocacy for its work with "regulations that work for small busi-

ness;" 2) ChemAlliance—the chemical manufacturers center—has been listed by the Dow Jones Business Directory as a "select site;" and 3) the editors of *@gOnline*, *Successful Farming's* online magazine, have selected the National Agriculture center (Ag Center) as a "high-ranking site."

#### COMPLIANCE ASSISTANCE CENTERS LEAD TO IMPROVEMENTS

Based on eight voluntary Internet surveys, approximately 70 percent of the companies and local governments that use the Centers said they took one or more positive actions as a result (e.g., changing the handling of waste, obtaining a permit, changing a production process, contacting a regulatory agency). As a result of these actions, over 50 percent felt they had a cost savings, and over 75 percent indicated an environmental improvement (e.g., reduced air emissions, conserved water). Over 80 percent of survey respondents rated the Centers as useful or very useful for understanding environmental regulations, while only three percent of respondents did not find them useful. Over 65 percent of surveyed users visit a Center Internet site at least once a month. Nearly one-third of those surveyed visit at least once per week. Moreover, data from the second national level of compliance survey of the automotive service and repair industry show that compliance assistance projects, like *GreenLink®*, are having a profound effect on the industry's level of compliance. This survey, when compared to the 1997 survey, indicates that the level of compliance has improved. In 1999, 56 percent of the industry achieved a targeted level of compliance as compared with the 1997 level of 26 percent, a two-fold improvement.

In addition to the Compliance Assistance Centers, EPA continued to develop a wide variety of other tools and outreach materials to promote compliance with environmental laws on an industry-by-industry basis, reaching approximately 330,000 entities. These tools include industry sector notebooks, plain language compliance guides, training modules, and compliance checklists. In FY 1999, EPA completed 10 sector guides and more than 30 other outreach documents for industries such as

food processing and chemical manufacturing. Other compliance assistance materials completed in FY 1999 include the following:

- Four environmental audit protocol manuals to assist the regulated community in conducting environmental audits. The audit protocols cover the Resource Conservation and Recovery Act (RCRA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). To date, EPA has distributed approximately 7,500 audit protocols to industry and regulators.
- Environmental Management Reviews (EMRs) to assist 22 Federal agencies in meeting environmental requirements. EMRs focus on the system of policies and procedures the facility consistently uses to address environmental issues and maintain compliance with environmental regulations. The pilot program provided EPA with the ability to identify common strengths and areas of improvement needed in Environmental Management Systems (EMS).
- The “Environmental Management Resources for Indian Tribes” to serve as a reference for information on over 170 environmental resources specifically available to Tribes for developing and strengthening Tribal environmental programs. The guidebook also can assist Federal and State agencies, as well as other organizations that work with Tribes on environmental issues. This tool helps public sector entities understand their responsibilities, both as co-regulators and as regulated entities.

EPA also changed behavior through implementation of the National Environmental Policy Act (NEPA). Under NEPA, EPA reviews the environmental impacts of proposed major Federal actions. EPA identifies ecological and public health risks and negotiates changes to eliminate or mitigate these risks. In FY 1999, EPA reviewed 100 percent of significant proposed Federal actions subject to NEPA and persuaded sponsors to voluntarily address 68 percent of EPA’s concerns with the proposed actions. For example, EPA’s recommended changes to a flood control project increased

the acres of wetlands created and improved the location for disposal of a half million cubic yards of fill material.

## PROGRAM EVALUATION

EPA uses both formal and informal approaches to evaluate the effectiveness of its enforcement and compliance assurance program. Methods range from a formal process of evaluating Regional, State, and Tribal performance to the use of stakeholder meetings to solicit views on effectiveness. Efforts undertaken in FY 1999 include the following:

- An examination of the overall performance of the Agency’s enforcement and compliance program through two program review conferences involving a wide range of stakeholders. The conferences elicited the views of participants on how EPA can improve public health and the environment through compliance efforts. Agency responses to stakeholder input include commitments to develop a national clearinghouse of compliance assistance materials, an annual compliance assistance plan, and compliance assistance tools for major new regulations. (A summary of the views expressed at the conferences is available on the Internet at <http://es.epa.gov/oeca/innovative/5yrfinal.pdf>.)
- A review of the performance of key compliance policies to determine whether they achieve the desired results. EPA evaluated the impact of its Audit Policy and the Small Business Policy and funded an independent evaluation of the effectiveness of State audit policies to determine the extent of use and the level of satisfaction of those who have used them. For example, in a voluntary, anonymous survey of 252 disclosing entities, 88 percent of the responding entities stated that they would use the EPA Audit Policy again, and 84 percent would recommend the Audit Policy to clients or counterparts.
- An evaluation by the Office of the Inspector General of EPA’s Clean Air Act compliance and enforcement program, which found that EPA and States need to develop a common understanding regarding the definition of a “significant violator” and actions required of the States



when dealing with significant violators. Following extensive coordination with the States, EPA issued new guidance that resolves these issues and aims to improve implementation of the CAA enforcement and compliance program for both EPA and the States. (The evaluation is located on EPA's Office of Inspector General Website at <http://www.epa.gov/oigearth/audit/list998/810024.htm>.)

## CHALLENGES AND CONCLUSIONS

The enforcement and compliance program faces many challenges and new opportunities. In FY 1999, EPA took advantage of opportunities to improve the application of compliance assistance, incentives, and enforcement tools to address environmental risk, noncompliance, and build capacity. In addition, the Agency utilized sophisticated targeting approaches for setting priorities among risks and noncompliance patterns.

In the future, meeting the challenge of Agency-wide integration of data will enable EPA to provide a comprehensive, readily accessible, multimedia view of environmental conditions. This requires increased attention to data management and data quality. Part of EPA's efforts to modernize and improve data quality includes integration of the General Enforcement Management System (GEMS) into the Agency's Integrated Information Initiative. GEMS will become a core part of EPA's integrated information system, providing a consistent framework, process, and structure for collecting and tracking information. The GEMS system will improve public access to useful, understandable compliance information. It also will fill critical data gaps in core enforcement programs. To design and implement a single integrated system from existing systems, EPA will need to reconcile data, develop common data definitions, and address the concerns of multiple parties, including the States. With GEMS as a critical component, the integrated information system will enable the Agency to streamline enforcement operations, reduce the burden and costs of managing enforcement data for both EPA and States, and allow the Agency to report consistent, quality information about the performance of its programs.

## KEY MILESTONES FOR THE FUTURE

- In FY 2000, EPA will use new measures established through the National Performance Measures Strategy (NPMS) to assess performance and improve effectiveness. NPMS includes both traditional measures, such as the number of inspections and enforcement actions, and also establishes outcome measures, such as compliance rates for selected regulated populations, pollutant reductions, other outcomes from enforcement actions, behavioral changes resulting from compliance assistance, and average time for significant violators to return to compliance.
- EPA will accelerate implementation of recommendations of the Agency's Innovations Task Force and of the two program review conferences held in FY 1999 to encourage and assist the regulated community in achieving and maintaining compliance with environmental laws. Using these recommendations as action items, the Agency will: continue its development as a "wholesaler" of compliance assistance tools and information; develop the tools in a timely manner and then work with others in the public and private sector to deliver the assistance; encourage organizations to use Environmental Management Systems to improve compliance and performance; continue to promote the use of voluntary compliance, such as the audit program; and seek greater stakeholder involvement in its planning process and greater public access to information. (The Report of the EPA Innovations Task Force is located on EPA's Reinvention Website at <http://www.epa.gov/reinvent/taskforce/report99>.)

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